UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BLACKHAWK NETWORK, INC.,

Petitioner,

v.

COMPUTER SERVICES, INC., et al.,

Respondents.

Case No. 3:23-mc-80303-JSC

ORDER RE: MOTION FOR DEFAULT JUDGMENT

Re: Dkt. No. 51

Blackhawk Network, Inc. ("Blackhawk") filed a petition and motion to compel JC Steel Targets, Inc. ("JC Steel") to arbitrate. (Dkt. Nos. 1, 18.)[1] The clerk entered JC Steel's default after it failed to appear or otherwise defend against this case. (Dkt. No. 50.) Blackhawk's motion for default judgment is now pending before the Court. (Dkt. No. 51.) After carefully considering Blackhawk's written submissions, the Court GRANTS Blackhawk's motion for default judgment against JC Steel as explained below.

BACKGROUND

A. Factual Allegations

The Court previously detailed the petition allegations and the Washington state litigation involving Blackhawk and JC Steel (Dkt. No. 45 at 2-4), and the Court adopts that description by reference here.[2]

[1] Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

[2] In August 2024, after the Court issued its order, the Spokane County Superior Court lifted the stay, resuming litigation. Blackhawk renewed its counterclaims against Computer Services and its crossclaims against JC Steel. *Computer Services v. Blackhawk Network Inc.*, No. 2220234932 (Wash. Superior Ct., Spokane County, Dkt. Nos. 62, 65).

B. Procedural Background

On November 14, 2023, Blackhawk petitioned the Court for an order compelling Computer Services, Inc. ("CSI") and JC Steel to arbitration. (Dkt. No. 1.) Blackhawk subsequently filed a motion to compel arbitration. (Dkt. No. 18.) The Court denied Blackhawk's motion to compel arbitration against CSI on claim preclusion grounds. (Dkt. No. 45 at 1.) Because "JC Steel ha[d] not appeared in the action, and Blackhawk ha[d] not yet obtained its default," the Court set a status conference "to address how to proceed against JC Steel."[3] (*Id.*) The Court vacated the status conference upon learning Blackhawk anticipated moving for default judgment. (Dkt. Nos. 47-49.)

On August 7, 2024, Blackhawk moved for entry of default as to JC Steel, and the clerk entered default. (Dkt. Nos. 48, 50.) Blackhawk subsequently filed the pending motion for default judgment. (Dkt. No. 51.) JC Steel has not responded. (Dkt. No. 55.)

DISCUSSION

After entry of default, a party may apply to the court for default judgment on the merits when a party has failed to plead or defend itself. Fed. R. Civ. P. 55(b)(2). The complaint's factual allegations, except those relating to damages, are deemed to be admitted by the non-moving party and accepted as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). To decide if default judgment should be granted, courts analyze two considerations. First, courts have an affirmative duty to examine subject-matter jurisdiction, personal jurisdiction, venue, and service of process as to claims against a non-appearing party when default judgment is sought. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). Second, courts in the Ninth Circuit may then exercise discretion in deciding whether default judgment is appropriate, applying the *Eitel* factors. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

I. JURISDICTION & SERVICE OF PROCESS

This Court has both subject-matter and personal jurisdiction over Blackhawk's motion to

[3] Claim preclusion is not an issue here. In the Spokane litigation, Blackhawk never moved to compel JC Steel to arbitration. (Dkt. No. 22 at 11-31, 37-38.) So, there is no "valid and final judgment on the merits in a prior suit" to warrant claim preclusion as to JC Steel. *See Hassan v. GCA Prod. Servs., Inc.*, 17 Wash. App. 2d 625, 633 (2021).

compel arbitration, and Blackhawk properly served JC Steel.

A. Subject-Matter Jurisdiction

Blackhawk petitioned this Court for an order compelling arbitration pursuant to the Federal Arbitration Act ("FAA"). (Dkt. No. 1.) "[T]he proponent of arbitration may petition for an order compelling arbitration in 'any United States district court which, save for [the arbitration] agreement, would have jurisdiction under title 28 in a civil action . . . of the subject matter of a suit arising out of the controversy between the parties.'" *Vaden v. Discover Bank*, 556 U.S. 49, 62 (2009) (quoting 9 U.S.C. § 4). Thus, "a federal court should determine its jurisdiction by 'looking through' a § 4 petition to the parties' underlying substantive controversy." *Vaden*, 556 U.S. at 62.

Looking through the petition, Blackhawk alleges diversity jurisdiction under 28 U.S.C. § 1332(a)(1), (Dkt. No. 1 ¶ 17), which grants jurisdiction if the matter in controversy exceeds $75,000 and is between citizens of different states. Both criteria are met here. Blackhawk's dispute with CSI and JC Steel involves $1,571,590.52. (*Id.* ¶ 18.) Blackhawk is "a corporation duly organized and existing under the laws of the State of Arizona with its principal place office located in Phoenix, Arizona." (*Id.* ¶ 14.) And "JC Steel is a corporation duly organized and existing under the laws of the State of Washington with its principal place office located in Spokane, Washington." (*Id.* ¶ 16.) Thus, the Court has subject-matter jurisdiction over the petition. *See* 9 U.S.C. § 4.

B. Personal Jurisdiction

The Court has specific personal jurisdiction over JC Steel through a forum selection clause. A defendant can expressly or impliedly consent to personal jurisdiction; for example, "parties may consent to jurisdiction through a forum selection clause in a contract." *S.E.C. v. Ross*, 504 F.3d 1130, 1149 (9th Cir. 2007) (citing *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315-16 (1964)). Here, the Reward Cards Agreement has a forum selection clause, stating, "Any controversy or claim arising out of or in any way connected with this Agreement or the alleged breach thereof shall be resolved by one arbitrator . . . in San Francisco, California and shall be held in the San Francisco Bay Area." (Dkt. No. 52-1 at 9.) JC Steel accepted the agreement. (Dkt. No. 1 ¶ 31.) Further, JC Steel "initially participated" in the arbitration in California before

voluntary dissolving. (*Id.* ¶ 9.) A forum selection clause "should control absent a strong showing there it should be set aside." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972). Because JC Steel has not appeared to challenge this forum section clause, the Court has personal jurisdiction.

C. Service of Process

On March 26, 2024, the magistrate judge to whom the case was then assigned issued an order to show cause as to whether and on what grounds JC Steel had been properly served. (Dkt. No. 28.) Upon consideration of Blackhawk's response, the magistrate judge discharged the order. (Dkt. No. 34.) As the magistrate judge determined, service was proper in this case.

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Therefore, the Court has subject-matter and personal jurisdiction, and Blackhawk properly served JC Steel.

II. DEFAULT JUDGMENT

The Court may grant default judgment on the merits of the case after entry of default judgment. Fed. R. Civ. P. 55; *see Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) ("The district court's decision whether to enter a default judgment is a discretionary one."). The district court's discretion is guided by seven factors set forth in *Eitel*:

> (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel, 782 F.2d at 1471-72 ("*Eitel* factors").

The *Eitel* factors favor granting Blackhawk's motion for default judgment.

A. Possibility of Prejudice to Blackhawk

Under the first factor, the Court considers whether and to what extent Blackhawk will suffer prejudice, such as being left without a legal remedy, if the Court declines to grant default judgment. *See GS Holistic, LLC v. MSA-Bossy Inc.*, No. 22-CV-076638-JSC, 2023 WL 3604322, at *3 (N.D. Cal. May 22, 2023). "When a defendant fails to appear and defend its claims, the

plaintiff would be without recourse and suffer prejudice unless default judgment is entered." *Gunn Pac. Reflection LLC v. Johnsen*, No. 2:18-CV-06842-ODW, 2019 WL 2501476, at *2 (C.D. Cal. June 17, 2019).

In this case, JC Steel ceased participating in the arbitration and has failed to appear in this action. (Dkt. No. 48-1 ¶ 9.) Default judgment in the form of an order requiring arbitration will allow a neutral third party to determine the dispute between Blackhawk and JC Steel over the Reward Cards Agreement. *See United Food & Commer. Workers Union v. Pine Ridge Treatment Ctr., Inc.*, No. EDCV-21-2014, 2022 WL 2286484, at *2 (C.D. Cal. Mar. 11, 2022) (finding prejudice to the plaintiff because "[a]bsent a default judgment by this Court, [the defendant] . . . will have avoided liability by not responding to the action."). While there is litigation in the Spokane County Superior Court, in that case—as in this case—JC Steel has not appeared. As such, there is a high likelihood Blackhawk will suffer prejudice if default judgment is not granted because there is no other recourse for relief. Thus, the first *Eitel* factor weighs in favor of granting default judgment.

B. Merits of the Substantive Claim and Sufficiency of the Complaint

The second and third factors, "often analyzed together," consider whether the facts as pleaded in the petition address the merits and sufficiency of Blackhawk's claims. *See Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). These factors require a plaintiff to "state a claim on which the plaintiff may recover." *PepsiCo, Inc. v. Cal. Security Cans*, 238 F. Supp. 2d 1127, 1175 (C.D. Cal. 2002). The Court "is not required to make detailed findings of fact," because all well-pleaded allegations regarding liability are accepted as true. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

Here, Blackhawk seeks an order compelling JC Steel to arbitrate pursuant to the Reward Cards Agreement. This Court's role in analyzing the merits of such a petition is limited to considering: "(1) whether a valid agreement to arbitrate exists and if it does, (2) whether the agreement encompasses the dispute at issue." *Wilson v. Huuuge, Inc.*, 944 F.3d 1212, 1219 (9th Cir. 2019) (citation omitted). If the answer is yes "on both counts, then the [FAA] requires the court to enforce the arbitration agreement." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d

1126, 1130 (9th Cir. 2000). Both criteria are met here.

1. Whether a Valid Agreement to Arbitrate Exists

Blackhawk, "the party seeking to compel arbitration, must prove the existence of a valid agreement by a preponderance of the evidence." *Wilson*, 944 F.3d at 1219. Federal courts "apply ordinary state-law principles that govern the formation of contracts" to determine if such an agreement existed. *See id.* (citations omitted). Accepting Blackhawk's allegations as true, its petition establishes a valid arbitration agreement exists. (Dkt. No. 1 ¶ 2.)

Blackhawk alleges it entered into a contractual agreement with JC Steel around March 2021. Although the agreement was unsigned (Dkt. No. 51-1), Blackhawk sufficiently pleads JC Steel accepted it electronically by purchasing the rewards cards; when a user creates an account, the user must first bypass and electronically accept the agreement that pops open before ordering cards. (Dkt. No. 1 at 2, 94-97.) Therefore, Blackhawk sufficiently pleads a valid arbitration agreement exists.

2. Whether the Agreement Encompasses the Underlying Dispute

The Court next analyzes whether the dispute "falls within the scope of the parties' agreement to arbitrate." *Chiron Corp.*, 207 F.3d at 1131. In light of the "federal policy favoring arbitration agreements . . . 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'" *Id.* (citing *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24-25 (1983)). The Reward Cards Agreement explicitly states, "[a]ny controversy or claim arising out of or in any way connected with this Agreement or the alleged breach thereof shall be resolved by one arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association." (*Id.* at 21.) Blackhawk alleges JC Steel breached a provision of the Reward Cards Agreement, which provides, "In no event may cards be resold or offered for sale to consumers." (Dkt. No. 1 at 22 (capitalization removed).) So, accepting Blackhawk's allegations as true, Blackhawk sufficiently pleads the arbitration agreement encompasses the dispute.

In sum, because a valid arbitration agreement exists, the agreement encompasses the underlying dispute, and JC Steel has refused to participate in arbitration (Dkt. No. 1 ¶ 9), the

second and third *Eitel* factors favor granting Blackhawk's motion for default judgment.

C. Sum of Money at Stake

The fourth *Eitel* factor considers the sum of money at stake relative to the seriousness of the defendant's conduct. *Eitel*, 782 F.2d at 1471-72. Generally, this factor weighs against default judgment when the sum of money is unreasonably large compared to the potential loss caused by defendant. *Id.* Here, because Blackhawk is not seeking a monetary judgment, this factor weighs in favor of granting default judgment.

D. Possibility of Dispute Concerning Material Facts

The fifth *Eitel* factor considers whether the material facts are disputed. *Eitel*, 782 F.2d at 1471-72. The "well-pleaded facts" in the petition "are taken as true, except those relating to damages." *See PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Here, there are no damages, and as described above, Blackhawk sufficiently pleads the existence of an arbitration agreement and its applicability to the underlying dispute. Further, Blackhawk's allegations are supported by multiple exhibits. *See, e.g.*, *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916, 922 (C.D. Cal. 2010) (finding no material factual dispute because the plaintiff "supported its claims with ample evidence, and defendant has made no attempt to challenge the accuracy of the allegations in the complaint"); *United Food & Commerc. Workers Union*, 2022 WL 2286484, at *3 (finding because defendant has not appeared or asserted any defenses, "disputes of material facts are unlikely to arise"). Because no factual dispute exists to preclude default judgment, this factor weighs in Blackhawk's favor.

E. Whether the Default Was Due to Excusable Neglect

The sixth *Eitel* factor "favors default judgment where the defendant has been properly served or the plaintiff demonstrates that the defendant is aware of the lawsuit." *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 1072, 1082 (C.D. Cal. 2012). Blackhawk has demonstrated JC Steel's awareness, as JC Steel initially responded to the arbitration request, and Blackhawk sent the petition and summons to the same email address JC Steel used in its initial arbitration engagement. (Dkt. No. 17-5.) Blackhawk also attempted to serve JC Steel multiple times. (Dkt. No. 17-2; Dkt. No. 17-4.) Thus, Blackhawk has demonstrated JC Steel is aware of this lawsuit,

and JC Steel's failure to appear is not the product of excusable neglect. This factor favors entry of default judgment.

F. Policy Favoring Decisions on the Merits

Under the seventh *Eitel* factor, generally "default judgments are ordinarily disfavored" and "[c]ases should be decided upon their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. However, a defendant's failure to answer, let alone appear, "make[s] a decision on the merits impractical, if not impossible." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. "Termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action." *Id.* Because JC Steel has failed to appear, making a decision on the merits impossible, this factor weighs in favor of default judgment.

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In sum, all seven *Eitel* factors weigh in favor of granting Blackhawk's motion for default judgment.

III. REQUESTED RELIEF

Under Fed. R. Civ. P. 54(c), "[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Blackhawk requests this Court order JC Steel to participate in arbitration with Blackhawk pursuant to the Reward Cards Agreement. (Dkt. No. 51 at 10.) This requested relief is the same as the prayer for relief listed in Blackhawk's petition for an order compelling arbitration. (Dkt. No. 1 ¶ 11.) Accordingly, the Court does not exceed what is demanded in the petition by ordering JC Steel to participate in arbitration.

CONCLUSION

Blackhawk sufficiently pleads this Court has subject-matter and personal jurisdiction over this case, it properly served JC Steel, and the *Eitel* factors weigh in favor of entering default judgment for Blackhawk. Therefore, this Court GRANTS Blackhawk's motion for default judgment and compels JC Steel to arbitration.

This Order disposes of Docket No. 51.

IT IS SO ORDERED.

Dated: October 11, 2024

JACQUELINE SCOTT CORLEY
United States District Judge